



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 439

IN THE MATTER  
OF  
JOAO M. V. DIAS

## DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Joao Dias (Mr. Dias) pursuant to §5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On January 16, 1992, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mr. Dias. The Commission has concluded that inquiry and, on February 19, 1992, found reasonable cause to believe that Mr. Dias violated G.L. c. 268A, §17, or in the alternative that he violated c. 268A, §19.

The Commission and Mr. Dias now agree to the following facts and conclusions of law:

1. Mr. Dias has been a member of the Ludlow Planning Board (Board) since 1988. As such, he is a municipal employee within the meaning of G.L. c. 268A, §1.

2. Since 1985, Mr. Dias has been a practicing attorney with his offices located in Ludlow. Mr. Dias' clients include Jose Genovevo (Genovevo) and Coleman Development Corporation (CDC). In 1990, Genovevo developed a Ludlow subdivision called "Cedar Hills Estates." In connection with the Cedar Hills subdivision, Mr. Dias represented Genovevo in a conveyance and an eviction. In 1991, CDC attempted to develop a Ludlow subdivision called "Timber Ridge." In association with the Timber Ridge Development, Mr. Dias provided CDC with conveyancing, title search, and other legal services.

3. On July 10, 1990, Genovevo appeared before the Board requesting a waiver for subdivision regulations dictating the minimum width and height of roadways. Mr. Dias was present at that meeting. Mr. Dias disclosed that he represented Genovevo and stated that he would only join in the Board meeting to the extent he would translate for Genovevo (Portuguese is Genovevo's primary language). Mr. Dias, however, participated in the meeting beyond merely translating for Genovevo. The Ludlow Conservation Commission had raised wetland concerns about a road running through Genovevo's subdivision. Mr. Dias explained to the Board three options by which Genovevo could address the Conservation Commission's concerns. Mr. Dias related that only one of the three options was acceptable to Genovevo, that being the regulations waiver. Mr. Dias specifically requested that the Board reduce the height of the road from a 100-year flood level to a 10-year flood level. Mr. Dias also requested that the Board allow Genovevo to narrow the road from 28 feet to 18 feet. The Board granted Genovevo's waiver request by a 4-0 vote, with Mr. Dias abstaining.

4. CDC appeared before the Board at its February 26, 1991 meeting, seeking guidance on how to gain subdivision approval for the second phase of their Timber Ridge development. Mr. Dias attended the meeting. Mr. Dias disclosed that he represented CDC, and, consequently, he would be unable to represent CDC in their hearing. Nevertheless, Mr. Dias joined in the meeting. Since CDC had altered a road from the approved Phase I subdivision plans, the Board debated whether a second public hearing was necessary on Phase I. Mr. Dias informed the Board that the law did not require a second public hearing, rather a notation of the alteration could

be inserted in the Phase II subdivision plans. The Board went on to discuss whether CDC could accomplish a second exit by connecting their new 50-foot-wide road into an existing 20-foot-wide way on abutting land. Mr. Dias joined this discussion and opined that CDC had a legal right to lay their road to their property line. Mr. Dias also promised to research the title of the 20-foot-wide way to determine whether CDC or the town had access rights over it. The Board took no official action on CDC's Phase II subdivision plans.

5. CDC appeared before the Board at their April 23, 1991 meeting to request guidance on how they could achieve subdivision approval for the second and third phases of their Timber Ridge development. Mr. Dias attended this meeting. At the outset of the CDC matter, Mr. Dias stated he would only participate in the discussion to the extent he would read from an insurance company letter to CDC. Mr. Dias did, in fact, read from the letter. Mr. Dias, however, also joined in the remainder of the discussion. The Board's discussion focused on how CDC could achieve a second emergency means of access to its subdivision. Mr. Dias informed the Board that he had researched the title history of the land abutting CDC's subdivision. Mr. Dias explained that an existing 20-foot-wide way leading to the subdivision land was merely an easement by prescription, which would not entitle the town or the subdivision owners to travel over it. Mr. Dias also informed the Board that a way from an unrecorded plan connected the subdivision land to Alden Road, and that this way could establish the needed emergency access. Finally, Mr. Dias noted that the Board should obtain some form of guarantee from CDC that the second means of access would be maintained in the future.

6. Mr. Dias did not receive compensation from CDC or Genovevo for appearing at the July 10, 1990, February 26, 1991, and April 23, 1991 Board meetings.

7. General Laws c. 268A, §17(c) prohibits a municipal employee from acting as an agent or attorney for anyone other than the municipality in connection with a particular matter in which the same municipality has a direct and substantial interest. Under G.L. c. 268A, §1(g), Mr. Dias is a municipal employee for purposes of the conflict of interest law. The Board's July 10, 1990 vote on Genovevo's waiver request is a particular matter under G.L. c. 268A, §1(k). Likewise, the February 26, 1991 and the April 23, 1991 meetings involved particular matters, as the Board engaged in the process of making a decision as to whether CDC could adequately accomplish a second means of access to their subdivision. Ludlow, through the Board, possessed a direct and substantial interest in these particular matters.

8. Within the meaning of the conflict of interest law, a municipal employee acts as an agent where he acts on behalf of some other person or entity. *In re Zora*, 1989 SEC 401, 407; *aff'd*, No. 89-0937B (Mass. Super. Ct., Plymouth, January 2, 1991). The mere speaking or writing on behalf of another party satisfies the agency element of §17. *Id.*; *EC-COI-84-6*. Thus, by speaking on behalf of CDC and Genovevo at the Board meetings, Mr. Dias acted as their agent.<sup>1/</sup>

9. At each meeting, Mr. Dias disclosed his representation of CDC or Genovevo. In addition, Mr. Dias abstained from participating in the meetings as an official Board member. Disclosure and abstention from official participation, however, do not constitute a defense to a G.L. c. 268A, §17 violation. *In re Townsend*, 1986 SEC 276, 278; *In re Bingham*, 1984 SEC 174, 175. By speaking on behalf of Genovevo and Coleman at the Board meetings on matters in which Ludlow had a direct and substantial interest, Mr. Dias violated G.L. c. 268A, §17(c).<sup>2/</sup>

Based on the foregoing, the Commission has determined that the public interest would be served by the disposition of this matter without further Commission enforcement proceedings, on the basis of the following terms, to which Mr. Dias has agreed:

1. that he pay the Commission a civil fine of one thousand dollars (\$1,000.00) forthwith for violating G.L. c. 268A, §17; and

2. that he waive all rights to contest the findings of fact, conclusions of law, and conditions contained in the Agreement in this or any related administrative or judicial proceeding to which the Commission is a party.

**Date: March 31, 1992**

<sup>1/</sup>If the conduct of the parties is such that an inference is warranted that one is acting on behalf of and with the consent of another, an

agency exists as a matter of law. *Choates v. Board of Assessors of Boston*, 304 Mass. 298, 300 (1939); *In re Sullivan*, 1987 SEC 312, 314. Here, Mr. Dias disclosed that he served as CDC's and Genovevo's attorney. He then joined in Board discussions and expressed comments generally favorable to CDC's and Genovevo's positions. Genovevo and CDC were present at the meetings and did not contradict Mr. Dias' assertion that he was their attorney. Consequently, the Commission finds that Mr. Dias acted as CDC's and Genovevo's agent.

<sup>2</sup>Section 17 reflects the maxim that a person cannot serve two masters. Whenever a town employee acts on behalf of private interests in matters in which the town also has an interest, there is a potential for divided loyalties, the use of insider information and favoritism, all at the expense of the town.